such agreement cannot be reached through good faith negotiation, the issue should be decided through a dispute resolution process. Under no circumstance should Verizon be able to simply impose its view of the effect of a given change of law in the face of a good faith dispute on that question.

Q. What is WorldCom's position?

A. WorldCom has proposed that the Interconnection Agreement contain a provision indicating that the parties shall negotiate to amend the agreement if there are changes in law that materially affect the parties' obligations regarding the provision of services or other matters covered by the Agreement. As the FCC recognized in the Local Competition Order, interconnection agreements must be sufficiently flexible to accommodate changes in governing statutory or regulatory law. There must also be an orderly process for ensuring that such changes are properly incorporated into the agreement.

Q. What language has WorldCom proposed?

A. WorldCom has proposed the following language:

> 25.2 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially alter the obligation(s) to provide services or the services themselves embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions

which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section [13] (Dispute Resolution Procedures) hereof.

Q. What is Verizon's position?

A. Verizon has not disputed the necessity of a change-in-law provision, but has proposed that, in addition to the WorldCom proposed language, the Agreement contain a provision that allows it to unilaterally discontinue providing a service or benefit if Verizon believes it is no longer required to do so under Applicable Law.

Q. What language has Verizon proposed?

A. Verizon has proposed adding the following language:

25.8 Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that Verizon is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to WorldCom hereunder, then, unless otherwise agreed to in writing by the Parties, Verizon may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to WorldCom unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff or Applicable Law) for termination of such service, in which event such specified period and/or conditions shall apply.

Q. Why does Verizon assert that it needs this additional language?

A. Verizon asserts that WorldCom seeks to deny Verizon the benefit of any future legal or regulatory change which reduces the level of benefits or services Verizon must provide. Verizon also asserts that WorldCom's proposed language would allow WorldCom to hold Verizon hostage every time such a change occurred.

Q. What is wrong with Verizon's position?

A. Verizon's proposed language is unreasonable. Although it purports to propose a modification to WorldCom's language, the addition of its language all but nullifies the change-in-law process that WorldCom has proposed. Verizon's proposal that it be given the right to terminate a service if it believes it is entitled to do so – even if WorldCom disagrees – is unjustifiable.

First, as we noted earlier, it is critical that any amendments to the Agreement be mutually accomplished. Under Verizon's proposal, WorldCom has no means of expressing its disagreement with Verizon's reading of the new applicable law, or of protecting its customers from the effects of an erroneous termination of service, short of rushing to a state commission and seeking some form of emergency stay. The very purpose of an interconnection agreement, however, is to memorialize, with some specificity, both parties' views of their legal obligations; one party simply cannot be allowed to unilaterally amend its duties based on its own views.

This is particularly true when dealing with something as serious as termination of service. If Verizon terminates service to WorldCom, WorldCom may well have to terminate service to its own customers. The disruptive effects are obvious. Not only will customers' service be disrupted, but WorldCom's relationship with its own customers will suffer in a way that cannot be cured – even if a state commission later determines that Verizon was in error.

WorldCom wants to make clear that it is not attempting to deny Verizon the benefit of any changes in law. Instead, the WorldCom language ensures that the benefits of any changes in law fairly accrue to both parties. As we noted earlier and as reflected in the issues subject to arbitration in this proceeding, WorldCom and Verizon tend to disagree regarding the interpretation and meaning of the law. Therefore, it is possible that WorldCom would not agree with Verizon's view that a given change in law allows it to terminate a particular service offering. WorldCom's proposed section 25.2 protects against this by establishing a mutual process for addressing changes in law.

Nor does WorldCom's proposal hold Verizon "hostage" to obsolete legal requirements. If a change in law clearly does allow Verizon to terminate certain services, WorldCom's will agree and promptly amend the contract. If, however, the law is less clear, negotiation is the only fair way to resolve the dispute. If the parties are unable to agree during negotiation, they may seek commission review of the effect of the legal change whose meaning is disputed.

The parties' experience in the aftermath of the Eighth Circuit decision regarding combinations illustrates the reason this issue is so critical. Under Verizon's reading of that decision, it could refuse to provide WorldCom with a combination of two or more elements that are regularly combined in its network if such elements were not already combined at the moment WorldCom placed the order. This obviously has the potential to cause serious competitive harm. Needless to say, WorldCom does not agree with Verizon's sweeping interpretation of the Eighth Circuit's decision. This is precisely the type of dispute that is not appropriate for the type of self-help termination that Verizon has proposed.

Q. If a unilateral termination provision were somehow justified, would Verizon's proposed 30 day notice period be adequate?

Even if termination were justified, the 30 day notice period that Verizon has proposed is unworkable. First, WorldCom should be provided sufficient time to seek commission review of Verizon's decision. Thirty days is not adequate. A longer transition period would also be necessary to avoid interrupting customers' service. For example, if the FCC were to decide that local switching is no longer required, and Verizon terminated the availability of local switching upon 30 days' notice, WorldCom's UNE-P customers would suffer severe interruptions of service. It would require significantly more than 30 days to switch those customers to WorldCom switches. Any termination of service should be preceded by sufficient notice to allow a carrier to preserve its customers' service.

Q. What does WorldCom request of the Commission?

A. WorldCom requests that the Commission order the inclusion of WorldCom's proposed Part A, Section 25.2 into the Interconnection Agreement, and the exclusion of Verizon's proposed 25.8.

Issue IV-121

Should the Interconnection Agreement contain a provision (1) requiring Verizon to provide services and perform under this Agreement in accordance with any performance standards, metrics, and self-executing remedies (a) set forth in the Agreement and (b) established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (2) incorporating those standards, metrics and remedies by reference into the Interconnection Agreement?

Q. What is WorldCom's position?

A. WorldCom has proposed that the Interconnection Agreement incorporate Verizon's obligations under any performance standards, metrics, and self-executing remedies established by the FCC, state commission, or any governmental body of competent jurisdiction. This provision merely requires Verizon to comply with governing law, and incorporates that legal obligation into the parties' agreement.

Creating a contractual obligation to adhere to law further ensures that Verizon will honor its duties to comply with the governing performance standards and metrics as they relate to the services provided under the Agreement. Because the provision merely transforms Verizon's legal obligation to follow the law into a contractual obligation to follow the law, it should be uncontroversial, provided that Verizon intends to comply with the law. The provision should be included because interconnection agreements are generally drafted to codify the parties' legal responsibilities.

Q. What language has WorldCom proposed?

A. The specific language that WorldCom proposed is:

> 27.3 Verizon shall provide services and perform under this Agreement in accordance with (i) any performance standards, metrics, and self-executing remedies established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (ii) the performance standards, metrics and self-executing remedies set forth in Attachment X of this Agreement. The performance standards, metrics, and self-executing remedies established by the FCC, the Commission, and other governmental body of competent jurisdiction are hereby incorporated into this Agreement.

Q. What is Verizon's response?

A. In its response, Verizon objects to this provision on the grounds that it disagrees with WorldCom's wording. Because Verizon has failed to identify what aspects of the wording it finds objectionable, we are unable to respond to that criticism.

Issue VI-1(N) – Assurance of Payment

Q. What does Verizon propose in Section 6 of its proposed language?

A. Verizon's proposed Section 6, entitled "Assurance of Payment," would obligate WorldCom, upon a request by Verizon, to provide Verizon with adequate assurance of payment of amounts due (or to become due) to Verizon. Furthermore, Section 6 would give Verizon the right to suspend its performance obligations under the agreement if WorldCom fails to take the precise assurance of payment measures set forth in Section 6.

Q. What exactly does Verizon's proposed Section 6 provide?

A. In its entirety, it provides that

> 6.1 Upon request by Verizon, **CLEC shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
>
> 6.2 Assurance of payment of charges may be requested by Verizon if **CLEC (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to **CLEC by Verizon, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

6.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at Verizon's option, consist of (a) a cash security deposit in U.S. dollars held by Verizon or (b) an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to Verizon. The cash security deposit or letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Verizon, for the Services to be provided by Verizon to **CLEC in connection with this Agreement.

6.4 To the extent that Verizon elects to require a cash deposit, the Parties intend that the provision of such deposit shall constitute the grant of a security interest in the deposit pursuant to Article 9 of the Uniform Commercial Code as in effect in any relevant jurisdiction.

6.5 If payment of interest on a cash deposit is required by an applicable Verizon Tariff or by Applicable Law, interest will be paid on any such cash deposit held by Verizon at the higher of the interest rate stated in such Tariff or the interest rate required by Applicable Law.

6.6 Verizon may (but is not obligated to) draw on the letter of credit or cash deposit, as applicable, upon notice to **CLEC in respect of any amounts to be paid by **CLEC hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.

6.7 If Verizon draws on the letter of credit or cash deposit, upon request by Verizon, **CLEC shall provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 6.2.

6.8 Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as **CLEC has provided Verizon with such assurance of payment.

6.9 The fact that a deposit or a letter of credit is requested by Verizon hereunder shall in no way relieve **CLEC from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

Q. What is WorldCom's response?

A. WorldCom objects to inclusion of Section 6 for a number of reasons. First, Section 6 imposes requirements on WorldCom that are not required of CLECs by any provision of the 1996 Act. Second, the requirements at issue are heavy-handed and unduly onerous. Section 6 would require WorldCom to take certain prescribed steps (including providing a cash security deposit or letter of credit) to convince Verizon that WorldCom is able to meet its payment obligations whenever Verizon deems such measures to be necessary. There is simply no need to give Verizon unfettered authority, as Section 6 would, to make such requests for minor occurrences such as a failure to timely pay a bill, especially given that billing disputes between the parties are common.

Relatedly, suspension of service is an unjustified and draconian response to any concerns Verizon might have about WorldCom's ability to meet its payment obligations. There is no real danger that WorldCom's ability to pay will suddenly be so adversely affected that Verizon would be justified in suspending service. More pertinently, such a dramatic response would have wide ranging negative effects. First, it would be harmful to WorldCom's customers, who would suddenly lose service. Second, such sudden suspension in service would irreparably harm the goodwill that WorldCom's enjoys with its customers. And, finally, there are other, less dramatic remedies available to Verizon.

Verizon provides no explanation, nor could it, for why it should be entitled to request assurance of payment from WorldCom, but WorldCom should be denied the reciprocal right to request the same assurances from Verizon. Although WorldCom does not agree that an assurance of payment provision is necessary, any such provision must, at a minimum, impose reciprocal obligations and confer reciprocal rights on the parties.

Q. What does WorldCom request of the Commission?

A. WorldCom requests that the Commission reject Verizon's proposed Section 6. Alternatively, if the Commission believes that Verizon's proposed Section 6 should be included in the interconnection agreement, it should ensure that this section be made reciprocal.

Issue VI-1(O) – Default

Q. What does Verizon's proposed Section 12 provide?

A. Verizon's proposed Section 12 provides that, where either party fails to make a payment required by the Interconnection Agreement or materially breaches any other material provision of the Interconnection Agreement, and such failure or breach continues for 30 days after written notice of the breach has been provided to the breaching party, the non-defaulting party may, by written notice to the defaulting party, (a) suspend the provision of any or all services under the Parties' agreement or (b) cancel the agreement and terminate the provision of all services under the agreement.

Q. What is WorldCom's response?

A. WorldCom objects to inclusion of Section 12. A unilateral suspension or termination right like that in Section 12 would be enormously disruptive, as it would enable each party simply to declare unilaterally a material breach by the other and discontinue providing services. Such periodic service interruptions would be contrary to the purposes of the Act and, as discussed above, would adversely affect the parties and their customers.

Unilateral suspension or termination also ignores the fact that Verizon's obligations under the Act do not evaporate due to an alleged default under the Interconnection Agreement. Section 12, as proposed by Verizon, would permit Verizon to use a default regarding one service as justification to terminate the entire Agreement and all other services provided under the Agreement.

Q. How, then, does WorldCom propose that the parties resolve disputes over uncured default?

A. WorldCom suggests that all contractual disputes and situations of alleged uncured default be resolved on a case by case basis pursuant to the dispute resolution procedures proposed in WorldCom's Issues IV-100 and IV-101. In such a proceeding, either party can raise the question of termination or suspension of service in the event of default as it relates to the facts of that particular case.

Moreover, to have a third party help resolve the dispute over default and suspension or termination is in the public interest. The Commission or mediator/arbitrator will ensure that the parties take into consideration the impact that termination or suspension of service will have on customers in a way that the parties, on the their own, would probably not. Indeed, leaving this drastic remedy in the hands of a carrier does not serve the customers most likely impacted by the termination of services. As mentioned above, Verizon has significant incentives to disrupt WorldCom's relationships with it customers in order to win back market share in the local telecommunications marketplace. This gives Verizon the incentive to find default and push to discontinue service more rapidly than in other commercial settings.

Q. In the event the Commission finds that a default provision should be included in the Agreement, does WorldCom propose any particular language?

A. Yes. Consistent with the concerns raised here, WorldCom has proposed the following language:

> If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, seek relief or recourse in accordance with the Dispute Resolution sections of this Agreement.

Q. What distinguishes the language proposed by WorldCom from that proposed by Verizon?

A. Again, WorldCom's language incorporates the dispute resolution process to which the parties have already agreed in Issue IV-100 and are subject to resolution in Issue-101, and avoids the drastic measures of suspension or termination of all the services provided under the Agreement.

Q. What does WorldCom request of this Commission?

A. WorldCom requests that the Commission reject Verizon's proposed Section 12 . In the event the Commission finds that the Agreement should contain a default provision, WorldCom requests that the Commission order that the uncured default be resolved pursuant to the Dispute Resolution procedure proposed in WorldCom's Issue IV-100, or order the inclusion of WorldCom's proposed alternative default provision into the Interconnection Agreement.

VI-1 (R) – References

Q. What do Verizon's proposed Sections 35.1 and 35.2 provide?

A. Verizon's proposed Section 35.1 is a provision that would define the references made to other provisions within the Interconnection Agreement (including Sections, Appendices and Exhibits) and to sources and authorities outside of it (including Tariffs, other agreements, technical guides and laws). Section 35.2 of their proposed agreement would also define the references to sources outside of the Agreement including subsequent amendments and supplements to those sources. Verizon's proposed Sections 35.1 and 35.2 provide that

> 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
>
> 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including Verizon or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

Q. What is WorldCom's response?

A. WorldCom agrees to Verizon's proposed Section 35.1. However, WorldCom objects to the inclusion of the phrase "as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision)" of Verizon's proposed Section 35.2.

Verizon's proposed Section 35.2 introduces an unworkable degree of uncertainty into the Interconnection Agreement. More specifically, it would allow the specific terms over which the parties have negotiated (or have been ordered by a commission) to be materially altered by future changes to tariffs, laws, or other authorities and sources, and would improperly allow Verizon (and others) to unilaterally change the terms of the Agreement without reconciling those changes with the terms and provisions over which the parties have deliberated, negotiated and compromised.

Relatedly, Verizon's proposed language would also supplant the change-in-law provisions proposed by WorldCom (and agreed to by Verizon) in Issue IV-113, and discussed by us earlier in my testimony. To repeat, WorldCom and Verizon tend to disagree regarding the meaning of the law. The parties should, accordingly, reconcile their oft-diverging interpretation of changes or amendments to outside sources in negotiations and arbitrations. It is important that any changes to the Agreement be made through a deliberative process that involves both parties and allows a mutually satisfactory amendment to be incorporated into the Agreement.

Accordingly, WorldCom proposes that the Interconnection Agreement should specifically define the references as they exist at the time that the parties entered into the Agreement to ensure that the Agreement does not become subject to the ebb and flow of the changes caused by the outside references. The manner in which the amendments and supplements are referred to or incorporated into the Agreement should, at the very least, be reconciled through negotiation between the parties.

Q. Accordingly, has WorldCom proposed alternative language?

A. Yes. WorldCom proposes that the Commission reject the objectionable language in Section 35.2 discussed above and replaced with the phrase "as of the effective date of the interconnection agreement." Consistent with the concerns raised here, this proposed language removes the uncertainty that would otherwise be caused by reference to future unknown amendments and supplements to the outside authorities and sources.

Q. Does this conclude your testimony?

A. Yes.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc., and for	)	
Expedited Arbitration	)	

AFFIDAVIT OF JOHN TROFIMUK AND MATT HARTHUN AND LISA ROSCOE

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Matt Harthun, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Matt Harthun

Subscribed and Sworn to before me this 17th day of August, 2001.

Caroline E. Frazier

Notary Public

MY COMMISSION EXPIRES
JUNE 14, 2004

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc., and for Expedited Arbitration	)))))))))	CC Docket No. 00-218

AFFIDAVIT OF JOHN TROFIMUK AND MATT HARTHUN AND LISA ROSCOE

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, John A. Trofimuk, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

John A. Trofimuk

John A. Trofimuk

Subscribed and Sworn to before me this
12th day of August, 2001.

Dorothy E. Hauser

Notary Public

OFFICIAL SEAL
DOROTHY E HAUSER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:07/28/05

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc., and for Expedited Arbitration	)))))))))	CC Docket No. 00-218

AFFIDAVIT OF JOHN TROFIMUK AND MATT HARTHUN AND LISA ROSCOE

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Lisa Roscoe, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Lisa Roscoe

Subscribed and Sworn to before me this
17 day of August, 2001.

Capricia Galloway
Notary Public, District of Columbia
My Commission Expires 07-15-2006

Notary Public